

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THRIVEST SPECIALTY FUNDING, LLC	:	
	:	
v.	:	Civil Action No. 2:18-CV-1877
	:	
WILLIAM E. WHITE	:	

ORDER

AND NOW, this ____ day of _____, 2019, upon consideration of Thrivest Specialty Funding, LLC's ("Thrivest") Emergency Motion for Contempt, it is ORDERED as follows:

1. Defendant William E. White ("White") is in contempt of this Court's Order of July 1, 2019 (the "July 1, 2019 Order").

2. White is ORDERED to comply with the July 1, 2019 Order by 11:59 p.m. on the second business day following entry of this order. For every subsequent day that White fails to comply with the July 1, 2019 Order, he shall pay a fine of \$500.00 per day to the United States District Court for the Eastern District of Pennsylvania.

3. Unless and until White complies with the July 1, 2019 Order, any bank, financial, or brokerage institution or other person or entity holding any funds, securities, or other assets in the name of, for the benefit of, or under the direct or indirect control of White, shall hold and retain within their control and prohibit the withdrawal, removal, transfer, or other disposal of any such funds or other assets of White.

4. Unless and until White complies with the July 1, 2019 Order, White shall be prohibited from making any non-medical expenditures in excess of \$500 without Court approval.

5. As a sanction, White shall pay to Thrivest its fees and costs in connection with the preparation, filing, and pursuit of the Emergency Motion for Contempt. Thrivest shall submit a Declaration of Counsel Fees and Costs within ten (10) days of this Order, and White shall pay to Thrivest its fees and costs within ten (10) days of the filing of the Declaration of Counsel Fees and Costs.

6. White may apply to the Court to modify the terms of this Order in the event of a medical necessity or medical hardship.

BY THE COURT:

BRODY, J.

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THRIVEST’S EMERGENCY MOTION FOR CONTEMPT

Thrivest Specialty Funding, LLC (“Thrivest”) respectfully moves this Court to hold William E. White in contempt of Court for failure to comply with the Court’s July 1, 2019 Order confirming the Emergency Arbitrator’s interim award of emergency relief by entering an Order in the form proposed. In support thereof, Thrivest relies upon and incorporates by reference the accompanying Memorandum of Law.

Respectfully submitted,

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Dated: July 9, 2019

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THRIVEST SPECIALTY FUNDING, LLC	:	
	:	
v.	:	Civil Action No. 2:18-CV-1877
	:	
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**THRIVEST’S MEMORANDUM OF LAW IN SUPPORT OF ITS
EMERGENCY MOTION FOR CONTEMPT**

Thrivest Specialty Funding, LLC (“Thrivest”) submits this memorandum of law in support of its Emergency Motion for Contempt, which seeks to hold William E. White (“White”) in contempt of Court because White has failed to comply with the Court’s July 1, 2019 Order confirming the Emergency Arbitrator’s interim award of emergency relief (ECF No. 25) (the “July 1, 2019 Order”).

I. BACKGROUND AND RELEVANT FACTS

Thrivest and White are parties to an Agreement whereby, in December 2016, Thrivest provided White with a \$500,000 advance on his potential recovery in the NFL Concussion Litigation. See Agreement (ECF No. 1-3, Exhibit A). White has failed to honor their Agreement. To date, despite having the use and enjoyment of Thrivest’s advance for more than two and a half years and receiving a \$3.5 million award in the NFL Concussion Litigation triggering his payment obligations, White has not paid Thrivest anything.

The matter before the Court relates to an injunction issued by Emergency Arbitrator Hon. Stephen I. Platt (Ret.) and confirmed in the Court’s July 1, 2019 Order—namely, an injunction directing that White escrow funds pending resolution of the arbitration on the merits. On June 4, 2019, Judge Platt issued a Determination and Award (the “Determination”) and an Interim Award of Emergency Relief (the “Award”) finding that “there is a strong likelihood that [Thrivest] will prevail on the merits of this case and that Thrivest’s Agreement with [White] will

be enforced pursuant to the terms contained therein.” (ECF No. 21, Exhibit B at 17). Further, Judge Platt explained, Thrivest “has demonstrated a real likelihood that the settlement funds distributed to Mr. White are in danger of being dissipated, if not already dissipated, such that [Thrivest] will be unable, if successful on the merits, to collect the money owed it pursuant to the Agreement.” Id. Accordingly, Judge Platt issued the Award, directing White to escrow \$1,250,000 “into the trust account of his attorney, Robert C. Wood, Esq. ... pending and subject to a Final Award, further order of the arbitrator, or written agreement signed by the parties.” (ECF No. 21, Exhibit C).

White did not comply with the Award and, on June 11, 2019, White’s counsel confirmed that White contested the Award and AAA’s authority to issue it. Accordingly, Thrivest filed an Emergency Motion to Confirm Arbitration Award, seeking to confirm the Award as well as to compel arbitration. (ECF No. 21). In response, White sought to vacate the Award. (ECF No. 24). On July 1, 2019, the Court confirmed the Award and denied White’s application to vacate in the July 1, 2019 Order. (ECF No. 25).

On July 2, 2019, Thrivest wrote to White’s attorney requesting compliance with the July 1, 2019 Order by no later than the close of business on July 5, 2019. To date, White has not complied with the July 1, 2019 Order by escrowing \$1,250,000.00 in his attorney’s trust account, nor has his attorney provided confirmation that White has so complied or that White will comply if afforded additional time.

II. ARGUMENT

The Court should hold White in civil contempt and issue appropriate sanctions because it is undisputed that (1) the July 1, 2019 Order exists and is valid, (2) White, through his counsel, had notice of the July 1, 2019 Order upon its issuance, and (3) White has failed to comply with the July 1, 2019 Order by escrowing the funds directed.

Courts enjoy “inherent power to enforce compliance with their lawful orders through civil contempt.” Spallone v. United States, 493 U.S. 265, 276 (1990). Civil contempt sanctions are penalties “designed to compel future compliance with a court order.” Int’l Union, United Mine Workers of Am. v. Bagwell, 512 U.S. 821, 827 (1994). These sanctions serve two purposes: “one coercive and the other compensatory.” Harris v. City of Phila., 47 F.3d 1311, 1328 (3d Cir. 1995) (citing Bagwell, 512 U.S. 828–829). Coercive sanctions aim “to coerce the defendant into compliance with the court’s order and to compensate for losses sustained by the disobedience.” McDonald’s Corp. v. Victory Investments, 727 F.2d 82, 87 (3d Cir. 1984). This includes authority to imprison the contemnor “indefinitely until he complies with an affirmative command.” Chadwick v. Janecka, 312 F.3d 597, 608 (3d Cir. 2002) (imprisoning attorney for years for civil contempt of order to pay, citing Gompers v. Buck’s Stove & Range Co., 221 U.S. 418, 442 (1911)). Compensatory sanctions “make reparation to the injured party and restore the parties to the position they would have held had the injunction been obeyed.” Century 21 Real Estate Corp. v. DiGennaro Real Estate, Inc., No. CIV.A.01-979, 2002 WL 126631, at *3 (E.D. Pa. Jan. 31, 2002).

To establish contempt, a movant must prove by clear and convincing evidence: “(1) that a valid order of the court existed; (2) that the defendants had knowledge of the order; and (3) that the defendants disobeyed the order.” Marshak v. Treadwell, 595 F.3d 478, 485 (3d Cir. 2009) (affirming order of contempt for violation of injunction). As detailed below, contempt is appropriate based upon White’s failure to comply with the July 1, 2019 Order. **First**, the July 1, 2019 Order is valid, codifying Judge Platt’s Award as an Order of the Court. **Second**, through his counsel, White had knowledge of the July 1, 2019 Order. **Third**, it is undisputed that White has failed to comply with the July 1, 2019 Order by escrowing the funds directed. The Court

must hold White in contempt to compel compliance with the July 1, 2019 Order and to protect Thrivest from the risk of dissipation pending resolution of the arbitration on the merits.

A. The July 1, 2019 Order Is Valid.

The July 1, 2019 Order is a valid and binding Order that confirmed the Award by granting Thrivest's Emergency Motion to Confirm.

An order confirming an arbitration award "shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered." 9 U.S.C.A. § 13; Domus, Inc. v. Davis-Giovinazzo Const. Co., No. CIV.A. 10-1654, 2011 WL 3666485, at *6 (E.D. Pa. Aug. 22, 2011) (holding that a judgment confirming an arbitration award "shall have the same force and effect" as a judgment entered by the Court); Trustees of New York City Dist. Council of Carpenters Pension Fund v. Galway Dev. Corp., No. 19 CIV. 278 (PAE), 2019 WL 1567713, at *4 (S.D.N.Y. Apr. 10, 2019) (holding that "[a]n order confirming an arbitration award is to be 'docketed as if it was rendered in an action,' and 'have the same force and effect'" as a judgment rendered by the Court) (quoting 9 U.S.C. § 13).

"Courts traditionally have broad powers to enforce their own commands—if a court cannot enforce its own rules and orders, it is powerless." Allen Organ Co. v. Galanti Organ Builders, Inc., No. CIV. A. 89-7636, 1991 WL 183432, at *2 (E.D. Pa. Sept. 12, 1991). Accordingly, after confirming an arbitration award in an order, a Court can enforce the order, and the underlying award, if one party fails to comply. See id.

Here, there can be no dispute that the July 1, 2019 Order is valid and that it codified the relief contained in Judge Platt's Award as an Order of this Court. White had an opportunity to oppose Thrivest's Emergency Motion to Confirm and did so. In fact, White sought to vacate the

Award on grounds that this Court rejected in the July 1, 2019 Order. The July 1, 2019 Order is valid and White must comply with it. Absent compliance, he should be held in contempt.

B. White Had Knowledge Of The July 1, 2019 Order.

White has had knowledge of the July 1, 2019 Order since its issuance. The Court issued the July 1, 2019 Order through the Court's Case Management/Electronic Case Files (CM/ECF) system. Attorney Wood, White's counsel, is a registered user of the CM/ECF system as evidenced by his electronic filing of White's Opposition to Thrivest's Emergency Motion to Confirm. (ECF No. 23). Therefore, upon the filing of any document in this action, including the July 1, 2019 Order, Attorney Wood received immediate notification of the filing via e-mail. Notice to Attorney Wood, as White's agent, constitutes notice to White.

Here, the Court served the July 1, 2019 Order on Attorney Wood through the CM/ECF system consistent with Rule 4(b)(1) of the Federal Rules of Civil Procedure, which provides that "[i]f a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party." Accordingly, White was served with, and had knowledge of, the July 1, 2019 Order when Attorney Wood received the Order on July 1, 2019. Lest there be any doubt, on July 2, 2019, Thrivest's counsel included a copy of the July 1, 2019 Order in his demand to Attorney Wood for compliance. Despite clear notice of the July 1, 2019 Order, White has failed to comply and has given no indication that he will comply if afforded additional time. Contempt is the appropriate remedy under the circumstances.

C. White Has Failed to Comply With The July 1, 2019 Order.

As detailed above, White has failed to comply with the July 1, 2019 Order by depositing \$1,250,000.00 into escrow with his attorney pending resolution of the parties' dispute on the merits. Although White's compliance with the Award was long overdue at the time of the July

1, 2019 Order, Thrivest afforded him until July 5, 2019 to comply. It is now July 9, 2019 and White still has not complied, nor has he indicated an intention to comply with additional time.

D. Coercive Sanctions Are Appropriate.

Thrivest seeks to invoke the Court's contempt powers to prompt compliance with the July 1, 2019 Order. The Third Circuit has made clear that the Court has wide discretion in fashioning a civil contempt remedy. See Delaware Valley Citizens' Council for Clean Air v. Com. of Pa., 678 F.2d 470, 478 (3d Cir. 1982).

Judge Platt issued emergency relief in the underlying arbitration based on the likelihood that White would dissipate the funds in controversy before a decision on the merits. This Court confirmed the Award. Absent exercise of the Court's contempt powers, White will continue to ignore Judge Platt's Award and this Court's July 1, 2019 Order, exposing Thrivest to the very risk of dissipation that prompted the emergency relief in the first instance. Thrivest requests that the Court impose coercive sanctions to force compliance with the July 1, 2019 Order and then, if White continues his disobedience, imprison White until he complies.

First, Thrivest requests that the Court impose a fine of \$500.00 per day for each day of White's non-compliance. See Alla Paternack v. Bruce K. Klien, et al., Civil Action No. 14-2275, Schiller, J. (E.D. Pa. April 27, 2017) (imposing a fine of \$250.00 per day for each day of noncompliance with a settlement agreement). Second, Thrivest requests that the Court freeze White's accounts and restrict non-medical expenditures and/or transfers of more than \$500 absent court approval unless and until White complies with the July 1, 2019 Order. This sanction is well within the Court's discretion to fashion an appropriate contempt remedy and could prompt White to comply with the July 1, 2019 Order.

E. Compensatory Sanctions Are Appropriate.

Thrivest requests that the Court order White to pay Thrivest's attorneys fees and costs in connection with this motion as a compensatory sanction. The Court has the power to enter relief to restore the parties to the position they would have held if White had obeyed the July 1, 2019 Order. See Cardionet, LLC v. Mednet Healthcare Techs., Inc., 146 F. Supp. 3d 671, 692 (E.D. Pa. 2015) (holding that compensatory sanctions are available in civil contempt proceedings when the award of attorneys' fees can restore the injured party to the position it would have occupied had the contemnor complied with the Court order in question). Here, Thrivest would have not have incurred the fees and costs relating to the Emergency Motion for Contempt but for White's failure to comply. Therefore, Thrivest requests that the Court order White to pay Thrivest's fees and costs as a compensatory sanction.

III. CONCLUSION

For the foregoing reasons, Thrivest respectfully requests that the Court grant its Emergency Motion for Contempt and enter an Order in the form proposed.

Respectfully submitted,

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Attorneys for Plaintiff

Dated: July 9, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of July, 2019, I caused the Emergency Motion for Contempt to be filed with the Court via the Court's electronic filing system which provides notice to all counsel of record, including:

Robert Wood, Esquire
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Attorneys for William E. White

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